

THE FOLLOWING PRPS SENT ADDITIONAL INFORMATION AFTER THE ALLOCATION WAS COMPLETED - THIS INFORMATION WAS NOT CONSIDERED IN THE ALLOCATION BUT IS BEING INCLUDED IN THE ADMINISTRATIVE RECORD FOR INFORMATIONAL PURPOSES ONLY.

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#### MAUTZ PAINT COMPANY

Letter to Congressman Scott Klug dated June 26, 1996, from David Crass, attorney for Mautz, responding to letter sent to the Congressman by U.S. EPA explaining the basis for Mautz position in the allocation.

Letter dated May 9, 1996 from David Crass to Dorothy Attermeyer, USEPA Attorney for Site.

Letter dated April 2, 1996 from David Crass to Dorothy Attermeyer, USEPA Attorney for Site.

Letter dated March 8, 1996 from David Crass to Dorothy Attermeyer, USEPA Attorney for Site.

#### HERCULES INCORPORATED

Letter dated May 31, 1996 from Amy S. Cohen to Dorothy Attermeyer, USEPA Attorney for Site.

#### HERESITE PROTECTIVE COATINGS

Letter dated May 17, 1996, from Michael Dunn, Heresite's attorney to Dorothy Attermeyer, USEPA Attorney for Site.

Letter dated May 17, 1996 from Geoffrey Liban to Dorothy Attermeyer, USEPA Attorney for Site.

#### KOHLER COMPANY

Letter dated April 18, 1996 from James Kieckhefer to William Muno, Director, Superfund Division, USEPA.

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#### CASE CORPORATION

Letter dated June 14, 1996 from Daniel Murray, Attorney for Case, to Margaret Herring and Dorothy Attermeyer, USEPA Superfund Enforcement and attorney respectively.

#### HEIL COMPANY

Letter dated May 13, 1996 from William Nehrkorn, II, Attorney for Heil, to Dorothy Attermeyer (sic), USEPA Attorney for Site.

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June 14, 1996

## VIA REGULAR MAIL

Margaret Herring ✓

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## VIA HAND DELIVERY

Dorothy Attermeyer

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Re: Supplemental Response Of Case Corporation To 104(e) Request  
Marina Cliffs/Northwestern Barrel Site, South Milwaukee, Wisconsin

Dear Ms. Herring and Ms. Attermeyer:

## INTRODUCTION

On April 24, 1995, Case Corporation (formerly known as J.I. Case) responded to U.S. EPA's CERCLA Section 104(e) Request For Information for the Marina Cliffs/Northwestern Barrel Site in South Milwaukee, Wisconsin. Since its initial response, Case Corporation (hereinafter CASE) has acquired new, additional information relevant to U.S. EPA's inquiry, and herewith submits this Supplemental 104(e) Response. CASE incorporates by reference herein its initial April 24, 1995 104(e) Response, including CASE's denial of liability in connection with the Northwestern Barrel Site.

## SUPPLEMENTAL RESPONSE RE: VOLUME

Tousey Varnish Company was CASE's coatings supplier in the 1950s through the mid-1960s, involving mostly paint but some varnishes as well. Paints were used in the manufacture of tractors at CASE's "south plant", and varnishes were used on wooden components of farm implements made at CASE's "north plant". As stated in CASE's initial April 24, 1995 104(e) Response at pages 5-6, the Tousey paint and varnish drums belonged to Tousey, were handled by

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Tousey under a deposit/return arrangement, and Tousey had the empty drums reconditioned at the Northwestern Barrel Site before their being returned to Tousey Varnish. Now, through additional investigation, CASE has with new information been able to confirm that:

- 1) The Tousey drum deposit/return arrangement was a recurring business practice Tousey Varnish utilized with its customers generally during the relevant time period, and
- 2) During the times in question, Tousey Varnish was Case Corp.'s exclusive supplier of paints and varnishes, at both the CASE south and north plants.

CASE has determined that Tousey Varnish Company was incorporated in Illinois on October 29, 1891 by Chester and Thomas Tousey, for the purpose to "manufacture, sell and deal in varnish, japons, and other finishing materials, paints, and oils." Tousey Varnish initially operated at 560, then 520 West 25th Street in Chicago. To make way for construction of Highway 55 of the Interstate Highway System, Tousey Varnish Company moved its 25th Street facility to 135 West Lake, Northlake, Illinois in about 1960, where it continued to operate through 1966 (1965 is the close period for U.S. EPA's 104(e) Request). Interviews CASE recently conducted of former Tousey Varnish employees established that Tousey charged its paint and varnish customers a deposit on its drums and other containers, which deposits were credited to the customers' accounts when the containers were returned to Tousey. Tousey Varnish maintained contracts with a number of drum reconditioning companies to clean Tousey's drums, including Northwestern Barrel Company for servicing Tousey's Wisconsin accounts, such as CASE.

The new, additional information acquired from former CASE and Tousey employees alike establishes beyond peradventure that during the relevant time period, Tousey Varnish was CASE's *exclusive* coatings supplier. During the time in question, Tousey was meeting all of CASE's coatings needs, specifically paints and varnishes. This is significant new information because it confirms that for paints and varnishes, there was no such thing as Tousey drums, and "other" drums; rather, due to Tousey Varnish's exclusivity, they were in fact *all* Tousey drums.

Of the coatings products CASE purchased exclusively from Tousey Varnish in the 1950s through mid-1960s, paints were most prevalent. CASE's investigation of Tousey business practices also affirms the former Northwestern Barrel employees who consistently identified drums picked-up at CASE as paint drums belonging to Tousey Varnish. See Russel Verden 8-11-94 p. 73 ("agitator paint drums mostly"); Russel Verden 5-8-95 p. 68 ("they were paint drums"); Russel Verden 6-22-95 ("paint"); Winkler 6-14-94 p. 36 ("Tousey Varnish drums"); Winkler 6-27-94 p. 1 ("paints and varnishes"); Winkler 5-15-95 p. 46 ("usually were paint drums"); Winkler 5-25-95 p. 13 ("paint, Tousey Varnish drums"); Winkler 6-12-95 p. 201 ("99 percent were paint [drums]"); Klipfel 7-25-95 p. 13 ("paint agitator drums returned to Tousey Varnish"). The Northwestern Barrel drivers sporadically mentioned "oil", "grease", and "antifreeze" drums, but they *always* named "paint" as far and away the predominant drum picked-up at CASE.

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The newly acquired information establishing Tousey Varnish as CASE's exclusive coatings supplier dictates clarification for one area of Clarence Winkler's deposition testimony. Mr. Winkler was an infrequent driver to CASE facilities, but did remember picking up "varnish" drums belonging to Tousey Varnish at CASE's north plant. Winkler 5-15-95 p. 46 ("the varnish drums, the Tousey drums, I only remember picking them up at the north plant"); Winkler 6-12-95 p. 196-197 (same). Mr. Winkler also remembered picking up paint drums from CASE's south plant, but for unknown reasons failed to make the connection that *these paint drums were also from Tousey Varnish*. Winkler 6-12-95 p. 200-201. One can speculate that Winkler associated only *varnish* with Tousey Varnish, but in any event his failure to recognize the paint drums coming from CASE's south plant as Tousey drums is, in light of the new information described above, plainly wrong.

That Winkler is wrong in not associating the south plant paint drums with Tousey Varnish is evident because: 1) other Northwestern Barrel drivers identified paint drums generally at Case Corp. as belonging to Tousey, see above; 2) Winkler could not identify the paint drums as coming from any supplier other than Tousey, see Winkler 6-12-95 p. 202-203; and 3) CASE can now state categorically that *all* paint drums coming from the south plant from the 1950s to mid-1960s were in fact Tousey Varnish drums included in the Tousey deposit/return arrangement.

Because CASE in its 104(e) Response identified its deposit/return arrangement for Tousey Varnish Co. paint drums, and virtually every driver has confirmed Tousey's arrangement with Northwestern Barrel for pick-up, reconditioning, and return of those paint drums to Tousey, the paint drums picked-up at CASE are appropriately allocated to Tousey Varnish and not CASE. CASE submits that even a most conservative estimate is that no less than 75% of all drums picked-up at CASE were Tousey Varnish paint and varnish drums, properly allocable to Tousey.

CASE also wishes at this time to acknowledge the significant contributions you and U.S. EPA have made to establishing a viable waste-in database for the Northwestern Barrel/Marina Cliffs Site. Case Corp. is presently assigned to a tier containing 35 PRPs, all but one of whom have greater volume than CASE. Because Case Corp. is at the bottom of this tier, and because CASE believes there are bona fide reasons to reexamine CASE's volumetric allocation and toxicity rating based upon the newly acquired information discussed above, CASE seeks further review by U.S. EPA.

Russel Verden over the course of several years has made varying estimates of drums picked-up at Case Corp. With each new estimate, the number of drums picked-up has *decreased* markedly. The circumstances of Russel Verden's estimates are as follows:

- 1) 6-17-93 in an interview with Towne Realty's investigator, Russel Verden said "maybe once a week [a] hundred" drums were picked-up. If taken at face value, this could amount to 5,200 drums per annum, which wildly exceeds anything remotely connected to Case Corp.'s production capacity, and is *double* any other

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estimate by Russel Verden, or anyone else! Russel Verden's estimate is also erroneous because he named Case Corp. *in Kenosha*, but Case has no facility at all there. It also appears from the transcribed statement (p. 27-28) that the investigator sought clarification, but the tape recording was "unintelligible", leaving unknown the purported basis for Russel Verden's estimate.

- 2) 8-11-94 in a further interview with Towne Realty's investigator, Russel Verden identified Case Corp.'s correct location, and his estimated drum pick-ups dropped precipitately to "110 drums a month or every two weeks, I don't know". (p. 73) This amounts to 1,320-2,640 drums picked-up per annum, still greatly in excess of any drum usage correlating with Case Corp.'s actual production capacity.
- 3) 5-25-95 in oral deposition given under oath, Russel Verden in answer to questions posed by U.S. EPA's attorney estimated drum pick-ups at Case Corp. at 50-100 every three months (p. 534), or 200-400 per annum. While Russel Verden's two previous estimates (see above) grossly overstated the drums even *available* for pick-up at Case Corp., this last estimate is believed to be low, at least as to frequency. The 50-100 drums per pick-up is probably accurate, but the frequency of pick-ups was more likely on a monthly basis. Pick-ups of 50-100 drums monthly is 600-1,200 per annum, or an average of 900 per annum.

Case Corp. agrees with Russel Verden that a total of approximately 900 drums per annum could have been picked-up for reconditioning at Northwestern Barrel Company.

Clarence Winkler has also made varying estimates of the number of drums picked-up at Case Corp., and Winkler recognized that many of the drums picked-up belonged to Tousey Varnish Co..

- 1) 6-14-94 in an interview with Towne Realty's investigator, Clarence Winkler explained that Tousey Varnish of Chicago was a big supplier of "varnish" (it was paint, actually) to Case Corp., and Tousey Varnish drums picked-up at Case were reconditioned and returned to Tousey Varnish. Mr. Winkler said the drums picked-up varied "anywhere from 10 or 15 to maybe a truck load, maybe once a month or once every two months". (p. 36) Assuming a truckload was 100 drums (see Winkler deposition 5-15-95 p. 47 line 11), this amounts to as little as 60 and as much as 1,200 per annum, and one extreme is as obviously wrong as the other.
- 2) 6-27-94 in a handwritten statement given to Towne Realty's investigator, Clarence Winkler again recognized the presence of Tousey Varnish paint drums at Case Corp., and estimated pick-ups at 30-40 drums monthly, or 360-480 per annum, which seems low.

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- 3) 5-15-95 in oral deposition given under oath, Clarence Winkler in answer to questions posed by Towne Realty's attorney clarified that combining Tousey Varnish drums with those owned by Case Corp., pick-ups were as little as 25 and as much as 100 drums monthly. (p. 46-47) This amounts to 300-1,200 per annum, or an average of 750 per annum for all drums picked-up at Case Corp.
- 4) 5-25-95 in response to U.S. EPA's 104(e) Request, Clarence Winkler again combined Tousey and Case's own drums, and estimated as much as a truckload (100) per month, or 1,200 per annum.
- 5) 6-12-95 in oral deposition given under oath, Clarence Winkler estimated he picked-up 75 or 100 drums at Case Corp. on occasion, but he was unable to give any frequency for the pick-ups. (p. 196, 199-200) Mr. Winkler again identified drums at Case Corp. as belonging to Tousey Varnish. (p. 197-199)

Summarizing, some of Clarence Winkler's estimates are high, some are low, but on balance they are not inconsistent with and support an approximate per annum count of 900 for all drums picked-up from Case Corp.

Wayne Klipfel in his 104(e) Response stated he picked-up 80-90 drums monthly at Case, or 960-1080 per annum. Importantly, Mr. Klipfel identified the drums he picked-up as paint drums belonging to Tousey Varnish.

Thomas Gill in his 104(e) Response indicated 30-50 drums "perhaps weekly" (1,560-2,600 per annum), but Mr. Gill also acknowledged he only went to Case Corp. "a few" times because the "Racine route" was an "old guy's run", presumably because it was a relatively short distance from Northwestern Barrel. Thus, Thomas Gill's estimate is based upon very limited knowledge, and is inconsistent with drivers who picked-up at Case Corp. on a more regular basis.

Leonard Krueger in his 104(e) Response acknowledged he had been to Case Corp. all of five times to pick-up a truckload of drums.

In sum, Wayne Klipfel's estimate of 80-90 drums monthly picked-up at CASE is very close to the approximate 900 per annum most frequently appearing from other drivers' statements. Messrs. Gill and Krueger's pick-ups at Case Corp. were so few as to render them useless in determining any reliable frequency factor.

SUPPLEMENTAL RESPONSE RE: TOXICITY

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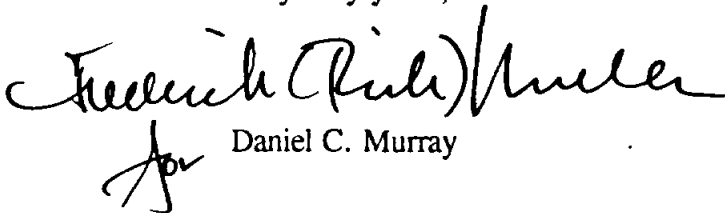
Toxicity for Case Corp. is based upon drum residues from oil, grease, antifreeze, cleaning solutions, inasmuch as the paint drums are appropriately assigned to Tousey Varnish (nearly all paint companies, including Tousey Varnish Co., are assigned the "medium" toxicity rating of "3"). Initially, CASE oil drums should be excluded altogether, from toxicity and volumetric allocation, inasmuch as U.S. EPA has deemed all oil company drums at this Site non-hazardous. And such few grease drums as CASE may have contributed are also petroleum product residues, and coolants and cleaning solutions are certainly deserving of at most a toxicity rating of not more than "medium", if not lower. Indeed, one PRP presently assigned a "medium" toxicity rating manufactured "poison", requiring drivers to wear protective gear when handling its drums (Klipfel 4-25-95 para. 12), never even remotely a concern with respect to Case Corp. drums.

### CONCLUSION

In conclusion, an approximation of 900 drums per annum picked-up at Case Corp. eliminates the drivers' gross *over* and *underestimates*, and is most consistent with the drivers' average mean estimates. Even a most conservative estimate of those drums picked-up at Case Corp. belonging to Tousey Varnish is 75%, and very likely much higher. CASE drum residues were generally non-hazardous, but certainly warrant nothing more than an average or "medium" toxicity rating. Thus, the evidence as is available supports a volumetric allocation of 4,050 (900 x 18 x .25), and a "medium" toxicity rating of "3".

On behalf of Case Corp., we thank you and U.S. EPA for your consideration of our Supplemental 104(e) Response and corresponding request for further review. If additional information is needed, or should you have any questions or comments, please contact the undersigned at 312 984 0226.

Very truly yours,



Daniel C. Murray

DCM:ps

cc: Reid A. Urban/Case  
David G. Mueller/Case



Margaret Herring/Dorothy Attermeyer  
June 14, 1996

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### CERTIFICATION

The foregoing supplemental information, subject to inadvertent or undisclosed errors, is based upon, and therefore necessarily limited by, information still in existence and presently recollected and discovered in the course of preparing this supplemental response. The company believes the information provided above is accurate, but it reserves the right to make changes in the supplemental responses any time omissions or errors have been made, or more accurate information becomes available.

I hereby certify that the foregoing facts are true to the best of my knowledge and belief.

Dated this 14th day of June, 1996.

CASE CORPORATION

By:

Reid A. Urban  
Reid A. Urban

Subscribed and sworn before me this  
14th day of June, 1996.

Alicia B. Andrade

Notary Public

